

A. Z. SHOWS

IBLA 84-317

Decided July 17, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer W-87574.

Affirmed.

1. Oil and Gas Leases: Lands Subject to

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which expired. Such land can only be made available for leasing again through a simultaneous offering pursuant to 43 CFR Subpart 3112.

2. Regulations: Binding on the Secretary -- Board of Land Appeals -- Secretary of the Interior

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

APPEARANCES: Joe L. Horne, Esq., New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

A. Z. Shows has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 30, 1984, rejecting his noncompetitive oil and gas lease offer W-87574.

On January 19, 1984, appellant filed a noncompetitive oil and gas lease offer for 160 acres of land situated in the E 1/2 NE 1/4, SW 1/4 NE 1/4, NE 1/4 SE 1/4 sec. 24, T. 47 N., R. 90 W., sixth principal meridian, Washakie County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). In its January 1984 decision, BLM rejected appellant's lease offer because the land sought had previously been leased and, thus, was subject to leasing only under the simultaneous oil and gas leasing system in accordance with 43 CFR Subpart 3112.

In his statement of reasons for appeal, appellant contends that the land sought in his lease offer does not qualify as land intended to be leased under the simultaneous leasing system where it is situated within an area known as the Sherard Dome which contains oil deposits, even though oil has never been "located in paying quantities." Appellant argues that the Department should exercise its discretion to award an oil and gas lease pursuant to his over-the-counter lease offer, and that leasing to a simultaneous oil and gas applicant would place the lease in "weak hands." Appellant states that such an applicant would have "neither the money nor the know-how to achieve production" and that it would be unlikely for the lease to be acquired by someone with such attributes. Appellant also notes that the fact that the 160-acre tract is being split into 40-acre parcels for simultaneous leasing purposes compounds the problem of achieving economic production.

[1, 2] It is well established that land, not on a known geological structure (KGS) of a producing oil or gas field, which was covered by an oil and gas lease which has expired is subject to leasing only under the simultaneous oil and gas leasing system in accordance with 43 CFR Subpart 3112, and that BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer for that land. E.g., Helen G. Haggard, 79 IBLA 320 (1984). That result is mandated by Departmental regulation. The current regulation, 43 CFR 3112.1-1(a), provides that

all lands which are not within a known geological structure of a producing oil or gas field, or a favorable petroleum geological province in Alaska, and were covered by Federal oil and gas leases which have been cancelled, terminated, relinquished or expired are subject to leasing only under this subpart. [Emphasis added.]

BLM is bound to follow duly promulgated regulations and does not have the discretion to issue a lease in response to an over-the-counter lease offer regardless of whether the land sought is known to contain oil deposits, 1/ the relative merits of the simultaneous versus the over-the-counter system, or the need for domestic production of oil or gas. Moreover, the courts have held consistently that a duly promulgated regulation has the force and effect of law, and is binding upon all Departmental officials, including this Board and the Secretary, and may not be waived. See, e.g., Vitarelli v. Seaton,

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1/ If the lands contained a KGS of a producing oil or gas field, the over-the-counter lease offer submitted by appellant would be rejected as the lands must then be leased pursuant to 43 CFR Part 3120 (Competitive Leases). We conclude the BLM determination that the lease must issue under 43 CFR Subpart 3112 is based on the fact that there has been no KGS determination. In a supplemental statement of reasons, appellant contends that he has access to a new device which will permit the extraction of the "appreciable quantities" of oil underlying the lands, which was never before possible. However, this does not change the conclusion that the lands are not available for leasing pursuant to an over-the-counter offer.

359 U.S. 535 (1959); Accardi v. Shaughnessy, 347 U.S. 260 (1954); Chapman v. Sheridan Wyoming Co., 338 U.S. 621 (1950); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Associates v. City of Newark, 424 F. Supp. 984 (D. N.J. 1977); Wilfred Plomis, 34 IBLA 222 (1978).

The record indicates that the land sought by appellant was included in oil and gas leases W-38425 and W-30863 which expired, respectively, on February 28, and September 30, 1983. Accordingly, we conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer in accordance with 43 CFR 3112.1-1(a).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

